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ATTORNEYS FOR ALARM PROTECTION, LLC, ALARM
PROTECTION TEXAS, LLC, ALARM PROTECTION UTAH, LLC,
ALARM PROTECTION ALABAMA, LLC, ALARM PROTECTION
ALASKA, LLC, ALARM PROTECTION ARKANSAS, LLC,
ALARM PROTECTION CALIFORNIA, LLC, ALARM
PROTECTION FLORIDA, LLC, ALARM PROTECTION
KENTUCKY, LLC, ALARM PROTECTION MISSISSIPPI, LLC,
AND ALARM PROTECTION TENNESSEE, LLC

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH

VIVINT, INC., a Utah corporation,

Plaintiff,

v.

ALARM PROTECTION, LLC, a Utah limited
liability company; ALARM PROTECTION
ALABAMA, LLC, a Utah limited liability
company; ALARM PROTECTION ALASKA,
LLC, a Utah limited liability company; ALARM
PROTECTION ARKANSAS, LLC, a Utah
limited liability company; ALARM
PROTECTION CALIFORNIA, LLC, a Utah
limited liability company; ALARM
PROTECTION FLORIDA, LLC, a Utah limited
liability company; ALARM PROTECTION
KENTUCKY, a Utah limited liability company;

**RESPONSE TO VIVINT'S MOTION
TO DISMISS THE THIRD, FOURTH,
FIFTH AND SIXTH CAUSES OF
ACTION IN ALARM
PROTECTION'S COUNTERCLAIM**

Case No. 2:14-cv-00441-CW

ALARM PROTECTION MISSISSIPPI, LLC, a Utah limited liability company, ALARM PROTECTION TENNESSEE, LLC, a Utah limited liability company, ALARM PROTECTION TEXAS, LLC, a Utah limited liability company; ALARM PROTECTION UTAH, LLC, a Utah limited liability company; ADAM SCHANZ, an individual, and DOES 1–10,

Defendants.

The AP Defendants submit this response to Vivint's Motion to Dismiss the Third, Fourth, Fifth and Sixth Causes of Action in Alarm Protection's Counterclaim (the "Motion").

RESPONSE

The AP Defendants submit to the Court that Vivint's Motion is now moot. Pursuant to Rule (a)(1)(B) of the Federal Rules of Civil Procedure, on March 14, 2015, within 21 days of the filing of Vivint's motion, including three additional days for electronic service, the AP Defendants submitted an Amended Answer and Amended Counterclaim (Dkt. 24). In their Amended Counterclaim, the AP Defendants submitted approximately 30 additional paragraphs providing detail as to the specific false statements made by Vivint representatives to the AP Defendants' customers. The addition of these allegations moot Vivint's arguments as to the AP Defendants' defamation and Lanham Act claims because such claims are plead with specificity. Additionally, the AP Defendants voluntarily removed their claims for common law unfair competition and common law unfair competition, deceptive advertising and unfair trade practices. With the AP Defendants' original counterclaim having been amended as a matter of right, Vivint's Motion is moot and should be denied without further consideration.

CONCLUSION

Because the AP Defendants have amended their counterclaim to overcome any alleged deficiency argued by Vivint, Vivint's motion to dismiss should be denied as moot.

DATED this 21st day of March, 2016.

MARSHALL OLSON & HULL, P.C.

By: /s/ Jason R. Hull
ERIK A. OLSON
JASON R. HULL

ATTORNEYS FOR ALARM PROTECTION, LLC, ALARM PROTECTION TEXAS, LLC, ALARM PROTECTION UTAH, LLC, ALARM PROTECTION ALABAMA, LLC, ALARM PROTECTION ALASKA, LLC, ALARM PROTECTION ARKANSAS, LLC, ALARM PROTECTION CALIFORNIA, LLC, ALARM PROTECTION FLORIDA, LLC, ALARM PROTECTION KENTUCKY, LLC, ALARM PROTECTION MISSISSIPPI, LLC, AND ALARM PROTECTION TENNESSEE, LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of March, 2016, a true and correct copy of the foregoing **RESPONSE TO VIVINT'S MOTION TO DISMISS THE THIRD, FOURTH, FIFTH AND SIXTH CAUSES OF ACTION IN ALARM PROTECTION'S COUNTERCLAIM** was served by the method indicated below, to the following:

| | | |
|---|-----|--------------------------------|
| Matthew A. Steward | (X) | Electronic CM/ECF Notification |
| Timothy R. Pack | () | U.S. Mail, Postage Prepaid |
| Shannon K. Zollinger | () | Hand Delivered |
| Clyde Snow & Sessions | () | Overnight Mail |
| One Utah Center, 13 th Floor | () | |
| 201 South Main Street | () | Facsimile |
| Salt Lake City, Utah 84111-2216 | | |

/s/ Jason R. Hull